

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2944 OF 2003

Miss Chhaya Shankar Pednekar. ...Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.

....
Mr. M.S. Topkar for the Petitioner.
Mr. R.D. Rane, G.P. for Respondent No.2.
Mrs. M. P. Thakur, AGP for Respondent Nos.1 and 3.

.....
**CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.**

February 8, 2006.

P.C.

The Petitioner was appointed by the letter dated 20th January 1972 in the office of Zilla Parishad, Sindhudurg. The Petitioner was permitted to retire on the ground of medical unfitness. Pursuant to the representation, by an order dated 6th April 1998, the Petitioner was declared entitled to invalidate pension from 27th March 1984 under Rule 68 of the Maharashtra Civil Services (Pension) Rules, 1982. It appears that thereafter the Zilla Parishad wrote to the Government to sanction extraordinary leave from 21st June 1982 to 27th March 1984. The Government, it appears, instead of considering only that period, also considered two earlier periods 9th June 1980 to 8th December 1980 and 6th

October 1981 to 17th May 1982 as unauthorised and consequently held that the Petitioner was not entitled to pension and directed the recovery. It is the case of the Petitioner that this order was passed without opportunity to the Petitioner of being heard. Considering the civil consequences involved, the Petitioner ought to have been heard before the order dated 22nd August 2002 had been passed.

On behalf of the Zilla Parishad, P.B. Chavan, Deputy Education Officer (Primary), has filed an affidavit. In para 12 of the affidavit, it is pointed out that the Petitioner has not tendered any Medical Certificate of any justification for her unauthorised absence between 21st June 1982 and 27th March 1984. In other words, prima facie, it is not a stand of the Zilla Parishad that the Petitioner was absent from 9th June 1980 to 8th December 1980 and 6th October 1981 to 17th May 1982 unauthorisedly.

Considering the above and civil consequences that would follow pursuant to the withdrawal of the pensionary benefits and a direction to recover the pension paid, the Respondents are bound to follow the principles of natural justice and fair play. That

has not happened in the instant case. In the light of that, the following order:

The impugned order dated 22nd August 2002 is set aside. The matter is remanded to Respondent No.2 for giving an opportunity to the Petitioner and thereafter to pass fresh orders accordingly to law. Till such fresh orders are passed, the Respondents are directed not to make recoveries in respect of dues which are already paid to the Petitioner.

Rule made absolute accordingly. No order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)